FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	No. 06-36057
Plaintiff - Appellee,	D.C. Nos. CV-05-06252-MRH
	CR-03-60053-MRH
v.	
JOSHUA GUNNER JOHNSON,	MEMORANDUM [*]
Defendant - Appellant.	

Appeal from the United States District Court
for the District of Oregon
Michael R. Hogan, District Judge, Presiding

Submitted October 22, 2007[**]

Before: B. FLETCHER, WARDLAW, and IKUTA, Circuit Judges.

Joshua Gunner Johnson appeals from the district court's denial of his 28

U.S.C. § 2255 motion. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and

2253, and we affirm.

Johnson contends that his two prior Oregon convictions for delivery of

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[*]   This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

[**]   The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

marijuana are not predicate serious drug offenses, as defined by the Armed Career Criminal Act ("ACCA"). *See* 18 U.S.C. § 924(e)(2)(A). He asserts that, following *Blakely v. Washington*, 542 U.S. 296 (2004), the district court should have relied on Oregon's sentencing guidelines, rather than state criminal statutes, to determine the maximum term of imprisonment prescribed for the disputed convictions.

These contentions, however, are foreclosed by *United States v. Murillo*, 422 F.3d 1152, 1155 (9th Cir. 2005), and *United States v. Parry*, 479 F.3d 722, 725-26 (9th Cir.), *cert. denied*, 2007 WL 2024987 (2007). Moreover, to the extent that Johnson's contentions rely on a retroactive application of *Blakely*, they also fail because his conviction was final before that decision was announced. *See Schardt v. Payne*, 414 F.3d 1025, 1038 (9th Cir. 2005) (holding that *Blakely* does not apply retroactively).

Because we affirm on other grounds, we do not reach the parties' remaining contentions.

AFFIRMED.